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**PRELIMINARY DRAFT**  
**No. 3644**

**PREPARED BY**  
**LEGISLATIVE SERVICES AGENCY**  
**2006 GENERAL ASSEMBLY**

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**DIGEST**

**Citations Affected:** IC 16-37-2-2.1; IC 31-14-7-3.

**Synopsis:** Genetic testing and paternity affidavits. Provides that: (1) a paternity affidavit may not be rescinded more than 60 days after the affidavit is executed unless a court has ordered a genetic test at the request of the man who executed the affidavit; (2) a court may not set aside an affidavit unless a genetic test excludes the man who executed the affidavit as the child's father; and (3) if a man executed a paternity affidavit, a court may not require any further proceedings to establish the child's paternity unless the man who executed the paternity affidavit requests a genetic test. Removes a provision that allows certain parties to request a genetic test.

**Effective:** July 1, 2006.



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A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-37-2-2.1 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2.1. (a) A paternity  
3       affidavit may be executed as provided in this section through:

- 4           (1) a hospital; or  
5           (2) a local health department.

6       (b) Immediately before or after the birth of a child who is born out  
7       of wedlock, a person who attends or plans to attend the birth, including  
8       personnel of all public or private birthing hospitals, shall:

- 9           (1) provide an opportunity for:  
10           (A) the child's mother; and  
11           (B) a man who reasonably appears to be the child's biological  
12           father;

13           to execute an affidavit acknowledging paternity of the child; and  
14           (2) verbally explain to the individuals listed in subdivision (1) the  
15           legal effects of an executed paternity affidavit as described in  
16           subsection (g).

17       (c) A paternity affidavit must be executed on a form provided by the  
18       state department. The paternity affidavit is valid only if the affidavit is  
19       executed as follows:

- 20           (1) If executed through a hospital, the paternity affidavit must be  
21           completed not more than seventy-two (72) hours after the child's  
22           birth.  
23           (2) If executed through a local health department, the paternity  
24           affidavit must be completed before the child has reached the age  
25           of emancipation.

26       (d) A paternity affidavit is not valid if it is executed after the mother  
27       of the child has executed a consent to adoption of the child and a  
28       petition to adopt the child has been filed.

29       (e) A paternity affidavit executed under this section must contain or  
30       be attached to all of the following:

- 31           (1) The mother's sworn statement asserting that a person



described in subsection ~~(a)(2)~~ **(b)(1)(B)** is the child's biological father.

(2) A statement by a person identified as the father under subdivision (1) attesting to a belief that he is the child's biological father.

(3) Written information furnished by the division of family and children:

(A) explaining the effect of an executed paternity affidavit as described in subsection (g); and

(B) describing the availability of child support enforcement services.

(4) The Social Security number of each parent.

(f) A woman who knowingly or intentionally falsely names a man as the child's biological father under this section commits a Class A misdemeanor.

(g) A paternity affidavit executed under this section:

(1) establishes paternity; and

(2) gives rise to parental rights and responsibilities of the person described in subsection (e)(2), including the right of the child's mother or the Title IV-D agency to obtain a child support order against the person.

However, if a paternity affidavit is executed under this section, the child's mother has sole legal custody of the child unless another custody determination is made by a court in a proceeding under IC 31-14.

(h) Notwithstanding any other law,

~~(1) any person listed in IC 31-14-4-1 or IC 31-14-4-3; or~~

~~(2) a man who is a party to a paternity affidavit executed under this section~~

may, within sixty (60) days of the date that a paternity affidavit is executed under this section, file an action in a court with jurisdiction over paternity to request an order for a genetic test.

(i) A paternity affidavit that is properly executed under this section may not be rescinded more than sixty (60) days after the paternity affidavit is executed unless a court:

**(1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and**

**(2) at the request of a man described in subsection (h), has ordered a genetic test.**

(j) Unless good cause is shown, a court shall not suspend the legal responsibilities under subsection (g)(2) of a party to the executed paternity affidavit during a challenge to the affidavit.

(k) The court ~~shall~~ **may not** set aside the paternity affidavit ~~upon a showing from~~ **unless** a genetic test ~~that sufficiently demonstrates that~~ **ordered under subsection (h) or (i) excludes** the person who executed the paternity affidavit ~~is excluded~~ as the child's biological father.



1 (l) If a paternity affidavit is not executed under subsection (b), the  
2 hospital where the birth occurs or a person in attendance at the birth  
3 shall inform the child's mother of services available for establishing  
4 paternity.

5 **(m) If a man has executed a paternity affidavit in accordance**  
6 **with this section, the executed paternity affidavit conclusively**  
7 **establishes the man as the legal father of a child without any**  
8 **further proceedings by a court.**

9 SECTION 2. IC 31-14-7-3 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. **(a)** A man is a child's  
11 legal father if the man executed a paternity affidavit in accordance with  
12 IC 16-37-2-2.1 and the paternity affidavit has not been rescinded or set  
13 aside under IC 16-37-2-2.1.

14 **(b) If a man executes a paternity affidavit in accordance with**  
15 **IC 16-37-2-2.1, a court may not require any further proceedings to**  
16 **establish the child's paternity unless the man who executed the**  
17 **paternity affidavit requests a genetic test under IC 16-37-2-2.1(h)**  
18 **or IC 16-37-2-2.1(i).**

